S.B. Civil Writ Petition No.8157/2007
Keasri Mal
vs
The Addl. District Judge, Parbatsar & Anr.
And
S.B. Civil Writ Petition No.8158/2007
Badri Painter
vs
The Addl. District Judge, Parbatsar & Anr.
And
S.B. Civil Writ Petition No.8159/2007
Raghunath Prasad
vs
The Addl. District Judge, Parbatsar & Anr.

Date of order : 11.12.2007.

HON'BLE MR. PRAKASH TATIA, J.

Mr.Kuldeep Mathur, for the petitioner.

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Heard learned counsel for the petitioner.

Since in all the three writ petitions, the petitioner has challenged the order passed by the trial court rejecting the application filed by the petitioner under Order 18 Rule 18 CPC, therefore, all the three writ petitions are decided by common judgment. However, for deciding the writ petitions, the facts of SBCWP No.8157/2007 are taken.

The petitioner is aggrieved because of rejection of petitioner's application filed under Order 18 Rule 18 CPC, which petitioner submitted before the first appellate court in a regular first appeal and prayed that the site may be inspected by the court in view of the fact that the different evidence has been

given by plaintiff in different civil suits with respect to the property in dispute as well as availability of the property of the non-petitioner. The application was rejected on the ground that the suit was filed in the year 1996 and the appeal before the first appellate court was pending since 2005 and, thereafter, in the year 2007 that too, in the month of Nov., 2007, the application has been filed by the appellant-petitioner. The trial court also observed that in fact by this application, the petitioner-plaintiff wants to collect evidence.

Learned counsel for the petitioner submitted that the court below has committed serious error of law by presuming that under Order 18 Rule 18 CPC if the court will inspect the site and will prepar a memorandum of site report then that will form the part of substantive evidence. Learned counsel for the petitioner relied upon the judgment of Bombay High Court delivered in the case of Raghuvir Harischandra Salgaonkar Vs. Smt. Saraswati Pundalik Salgaonkar reported in AIR 1984 Bombay 284 and another judgment of the Bombay High Court delivered in the case of Shankarlal Ganulal Khandelwal Vs. Balmukund Surajmal Bharuka reported in AIR 1999 Bombay 260. According to learned counsel for the petitioner it is clear from the above judgments that the memorandum prepared by the judge inspecting the site on the prayer of the

parties is not the substantive piece of evidence and can be used only for examining the veracity of the evidence already available on record. It is further submitted that by site inspection, the court can well examine the discrepancies and reach to the right conclusion with respect to the property when there is serious contradictory evidence on record. It is submitted that the petitioner's case will be seriously prejudice if the site will not be inspected by the court below.

I considered the submissions of learned counsel for the petitioner and perused the facts of the case. It is not in dispute rather say according to learned counsel for the petitioner himself that other party's evidence came on record in different litigation contains different stand of the other party and those contradictions are already on record. The dispute is with respect to the availability of the property with the respondent-non-petitioner and for that purpose, according to petitioner he already submitted Photographs in the first appellate court to show that in fact, the plaintiff's-non-petitioner's case is contrary to his own statement and is not telling with the actual site. The issue was in the knowledge of the petitioner well in the trial court itself about availability of the premises with the landlord-non-petitioner and he specifically obtained

the relevant evidence from the file of other case as stated by learned counsel for the petitioner himself. The petitioner could have proved the fact by positive evidence with respect of each and every detail of property. He could have also challenged the credibility of the statement of the plaintiff and his witness with the help of the evidence, which according to the petitioner he obtained from other case filed by the non-petitioner himself. All these facts with respect to the location of the property, measurement of the property and the nature of the property and its availability with the non-petitioner could have been proved by the petitioner by specific evidence for which according to learned counsel for the petitioner he also submitted full and detailed affidavit.

In view of the above reason, if the first appellate court refused to examine the spot, the first appellate court has not committed any error of fact or law. Apart from it, there is no reason given by the petitioner why the said prayer was not made when the trial was going on. Be that as it may be, it is the sole discretion of the court whether to inspect the site and that depends upon the facts of each case and in such discretionary order, this Court is not inclined to interfere under Article 227 of the Constitution of India when this Court is of the view

that no useful purpose could have been served by inspecting the site rather it might have embrassed the court only after inspection of the site and may have some complication at appellate stage in a appeal pending since last 2 years.

In view of the above, I do not find any force in these writ petitions and the same are hereby dismissed.

(PRAKASH TATIA), J.

c.p.goyal/-